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Chapter 1: Subject Matter Jurisdiction

CHAPTER 1 - SUBJECT MATTER JURISDICTION OF STATE COURT (CIVIL)

1. SUBJECT MATTER JURISDICTION OF STATE COURT (CIVIL)

NOTE - Remedy is Transfer - Pursuant to GA. CONST., ART. 6, §1, ¶ 8 and URSC § 19.1, when the court lacks jurisdiction, it is the court's duty to determine whether another Georgia court would have jurisdiction to hear the case and transfer it to that court. If transfer is possible, a motion to dismiss for lack of jurisdiction should be treated by the court as a motion for transfer. If a counterclaim exceeds the jurisdiction of the court, and the court denies transfer request, there is no *res judicata* barring the counterclaim, even if an appeal is dismissed on procedural grounds [Setlock v. Setlock, 286 Ga. 384, 688 SE2d 346 (2010)].

1.1 GENERAL CIVIL TEST

- 1.11 Civil cases** - State court has jurisdiction in all civil cases where the superior court is not given exclusive jurisdiction of such cases [OCGA 15-7-4(a)(2)];
- “Civil cases” include actions, such as trover and conversion, seeking possession of personal property [Dunlap v. Pope, 177 App. 539, 339 SE2d 662 (1986)].

NOTE - Cases governing magistrate court jurisdiction generally apply to state court jurisdiction. With the exception of magistrate court’s monetary limitation (\$15,000) and two defined exceptions, the test for jurisdiction is the same for state and magistrate court:

"the magistrate court has jurisdiction over civil claims in which exclusive jurisdiction is not vested in the superior court... If it is cognizable in state court, it would have been cognizable in magistrate court." [Brinson v. First American Bank of Georgia, 200 App. 552, 555(2), 409 SE2d 50 (1991)].

The exceptions are: state court may consider pre-judgment attachments and a few matters are reserved to courts of record (pre-judgment garnishment).

Accordingly, appellate cases analyzing magistrate court jurisdiction are generally equally applicable to state courts.

Similarly, the Supreme Court has exclusive jurisdiction over all “equity cases” on appeal [GA. CONST. ART. 6, § 6, ¶ 3(2)], so that cases involving analysis of equity cases in that context are often illustrative also (although an appeal may not be an “equity case” even when the case below was in equity because the equitable issues are no longer present on appeal) [Pittman v. Harbin Clinic, 263 Ga. 66, 428 SE2d 328 (1993)].

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1.12 Appeals - State Court also has jurisdiction over review of other courts' decision as may be provided by law;

- Appeals and certiorari from magistrate court civil judgments [OCGA 15-10-41(b)].

1.13 General ancillary powers of courts [OCGA § 15-1-3]:

- A. Preserve and enforce order in its immediate presence and, as near thereto as is necessary, to prevent interruption, disturbance, or hindrance to its proceedings;
- B. Compel obedience to its judgments, orders, and process and to the orders of a judge out of court in an action or proceeding therein;
- C. Control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter pertaining thereto;
 - This includes the inherent ***power to stay*** all proceedings [Bloomfield v. Liggett & Myers, Inc., 230 Ga. 484, 198 SE2d 144 (1973)];
 - Includes jurisdiction over motion to compel arbitration and stay proceedings (pursuant to arbitration clause) [Triad Health Mgmt. of Ga., III, LLC v. Johnson, 298 Ga.App. 204, 679 SE2d 785 (2009)].
- D. Administer oaths in an action or proceeding pending therein and in all other cases when it may be necessary in the exercise of its powers and duties;
- E. Amend and control its processes and orders, so as to make them comfortable to law and justice, and to amend its own records, so as to make them conform to the truth; and
- F. Correct its own proceedings before final judgment.

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1.2 CASES CONSTITUTIONALLY RESTRICTED TO SUPERIOR COURT:

1.21 Divorce cases [GA. CONST., ART. 6, § 4, ¶ 1].

NOTE - Related matters arising later (such as conversion of property awarded to party in divorce) may be heard by limited jurisdiction court [Dunlap v. Pope, 177 App. 539, 339 SE2d 662 (1986)].

1.22 Respecting title to land [GA. CONST. ART. 6, § 4, ¶ 1]

- A. "Cases respecting title to land," as that phrase is used in determining subject-matter jurisdiction of superior courts, refers to "cases in which the plaintiff asserts his *title* to the land in question, and depends for a recovery upon his maintenance of it . . ." [Ingold, Inc. v. Adair, 247 Ga. 155, 274 SE2d 560 (1981)], such as action in ejectment [Myers v. N. Ga. Title and Tax Free Exch., LLC, 241 App. 379, 527 SE2d 212 (1999)].
- B. Title to land cases ***do not*** include:
 - 1. Foreclosure of materialman's lien on real estate,
 - 2. Suit to confirm sale of land under power of sale,
 - 3. Application for sale of property set aside for widow's year's support,
 - 4. Suit to condemn land,
 - 5. Suit to determine location of disputed property line,
 - 6. Damages action for breach of warranty of title [Graham v. Talent, 235 Ga. 47, 218 SE2d 799 (1975)]

1.23 Equity cases - only superior court has jurisdiction in "equity cases" [GA. CONST. ART. 6, § 4, ¶ 1]:

- A. Equity cases include cases where a party seeks extraordinary remedies such as injunction, specific performance, writs of prohibition, mandamus, and quo warranto;
- B. In general, only superior court may order the party to perform or abstain from conduct outside of court as that would be ordering an injunction or specific performance [e.g., Mahan v. Watkins, 256 App. 260, 568 SE2d 130 (2002)].

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C. Other Examples:

1. Setting-off claim by defendant against a partnership in which plaintiff is a member [Oliver v. Godley, 38 App. 66, 142 SE 566 (1928)].
2. Rescission at equity (e.g., where proceeds of contract cannot be returned) [Johnson v. Frazier, 121 App. 212, 173 SE2d 434 (1970)].
3. Ordering sheriff to serve papers [Inquiry Concerning a Judge No. 94-70, 265 Ga. 326, 454 SE2d 780 (1995) (judge removed from office in part for holding a sheriff's deputy in contempt for disobeying such an order - her remedy was mandamus action in superior court)].

EXCEPTIONS - Enforcement of *consent* repair order in dispossessory by contempt OK and is *not* equitable despite affirmative acts demanded - approved as application of ancillary powers of OCGA 15-1-3 [H.J. Russell & Co. v. Manuel, 264 App. 273, 590 SE2d 250 (2003)]. The decision distinguished Mahan on the basis that it was not a dispossessory case.

Likewise, enforcing a nuisance abatement order by contempt proceeding under OCGA 41-2-5 was not an equity case [Horne v. Cordele, 254 Ga. 346, 329 SE2d 134 (1985)].

Issuance of a turnover order [OCGA 44-14-233(d)] in a personal property foreclosure is probably a similar legitimate ancillary power to enforce the court's jurisdiction to award possession of property.

1.24 What is not an "equity case" - in general, the modern trend is to limit "equity cases" strictly to cases where an equitable remedy is sought:

- A. Defendant may use "equitable defenses" to defend against liability [McLarty v. Springfield Life Ins. Co., 223 Ga. 707, 157 SE2d 735 (1967); 156 App. 513, 274 SE2d 850 (1980); Davita v. Othman, 270 App. 93, 606 SE2d 112 (2004) (equitable defenses to dispossessory)].
1. If the Court wishes to clarify the res judicata affect of the determination of the equitable issue, a special verdict form may be appropriate [OCGA 9-11-49(a)];
 2. Equitable ownership of property as defense to action for possession - several cases permit the assertion of equitable ownership interest in defending a dispossessory [Thomas v. Wells Fargo Credit Corp., 200 App. 592, 409 SE2d 71 (1991); Bread of Life Baptist Church v. Price, 194 App. 693, 392 SE2d 15 (1990); *but see* Hague v. Kennedy, 205 App. 586, 423 SE2d 283 (1992)] such claims are generally not received where rent is being paid under a landlord tenant agreement [Holy Fellowship Church of God in Christ v. Greater Travelers Rest Baptist Church, 236 App. 177, 511 SE2d 280 (1999)] (see **2.24G**, "Landlord's title" and **NOTE**).

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- B. Seeking a money judgment or possession of property generally OK.
 - Use of “equitable principles” as basis for money judgment does not make it an “equity case” because no equitable remedy is sought [Atlantic States Constr., Inc. v. Beavers, 250 Ga. 828, 301 SE2d 635 (1983) (equitable division of corporate assets - nevertheless filed in superior court under [OCGA 14-2-251].
- C. Rescission of a contract may be legal action (OK) or equitable action (beyond jurisdiction):
 - 1. Limited jurisdiction court may not reform contract (change its terms) or order conduct but may award money judgment relief [Brown v. Techdata, Inc., 238 Ga. 622, 234 SE2d 787 (1977)];
 - 2. Rescission at law - remedy - A party may rescind a contract in an action at law, tendering any proceeds [Douglas v. Currie Ford Co., 103 App. 75, 118 SE2d 586 (1961); City Dodge, Inc. v. Gardner, 130 App. 502, 203 SE2d 729 (1973)]; a limited jurisdiction court may **condition** the award of money damages upon the return of personal property [International Software Solutions, Inc. v. Atlanta Pressure Treated Lumber Co., 194 App. 441, 390 SE2d 659 (1990)].
- D. Piercing corporate veil [Schroeder v. Hunter Douglas, 172 App. 897, 324 SE2d 746 (1984)].

1.3 STATUTORY PROVISIONS - the following matters are reserved to superior court by statute (not complete):

- A. Declaratory judgments [OCGA 9-4-2; EVI Equipment, Inc. v. Northern Ins. Co., 178 App. 197, 342 SE2d 380 (1983)].
- B. Appointment of receiver [OCGA 9-8-1];
- C. Matters involving arbitration unless arbitration arose from litigation in state court [OCGA Chapter 9-9];
- D. Election cases;
- E. Dissolution of corporations [OCGA 14-2-284, 14-2-285(a), and 14-3-218, see EVI Equipment, Inc.] and rights of dissenting shareholders [OCGA 14-2-251, -1330];
- F. Against State Employees Assurance Department [OCGA 47-19-8];
- G. Adoptions [OCGA 19-8-1], legitimization of children, and name changes [OCGA 19-7-22, OCGA 19-12-1, see EVI Equipment, Inc.];
- H. Writs of habeas corpus [OCGA 9-14-4].

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- 1.4 NO WAIVER OF JURISDICTION** - subject matter jurisdiction cannot be conferred by consent or waiver, and **judgment rendered without subject-matter jurisdiction is absolutely void** [OCGA 15-1-2; Champion v. Rakes, 155 App. 134, 270 SE2d 272 (1980); Berry v. Consumer Credit of Valdosta, 124 App. 586, 184 SE2d 694 (1971)].

NOTE - Court's Duty to Inquire - it is the court's duty to inquire into jurisdiction, and if it is found lacking at any stage, the case shall be transferred or dismissed [OCGA 15-1-2].

1.5 WAIVER OF CLAIMS BEYOND JURISDICTION

- 1.51 Claims raised and not awarded - if a Plaintiff chooses the forum and raises claims beyond the jurisdiction (e.g., equitable claims) of the Court, such claims are barred from re-prosecution [Setlock v. Setlock, 286 Ga. 384, 688 SE2d 346 (2010); Mahan v. Watkins, 256 Ga.App. 260, 568 SE2d 130 (2002)]. If the plaintiff realizes the error before trial, s/he could file a motion for transfer and then appeal the denial [*See* Blackmon v. Tenet Healthsystem Spalding, Inc., 284 Ga. 369, 667 SE2d 348 (2008)].
- 1.52 Claims from same state of facts - such claims are barred even if not raised [Setlock v. Setlock, 286 Ga. 384, 688 SE2d 346 (2010); Green v. Bd. of Dirs. of Park Cliff Unit Owners Ass'n, 279 Ga. App. 567, 631 SE2d 769 (2006)].
- 1.53 Compulsory counterclaims:
- A. Defendants must also raise counterclaims beyond the jurisdiction of the Court (generally cases arising out of the same transaction or occurrence as the original claim - see OCGA 9-11-13) [Setlock v. Setlock, 286 Ga. 384, 688 SE2d 346 (2010); Oh v. Bell, 221 Ga.App. 276, 277, 470 SE2d 807 (1996)].
 - B. Defendant who asserts counterclaims beyond the jurisdiction of the Court and request transfer are not barred from raising the claims later, even if an appeal is denied on procedural grounds [Setlock v. Setlock, 286 Ga. 384, 688 SE2d 346 (2010)].
 - C. Cannot consider equitable setoff to child support garnishment based on child expenditures [Davis v. Davis, 220 App. 745, 470 SE2d 268 (1996) (en banc), *overruling* 170 App. 219, 221 (2), 316 SE2d 589 (1984), 157 App. 35, 276 SE2d 259 (1981), and 150 App. 602, 258 SE2d 282 (1979)].